APPENDIX A.

Judgment and Order of the Court of Appeal, Second Appellate District, State of California.

Milton Luros; and London Press, Inc., a California Corporation, Petitioners vs. Superior Court of the State of California for the County of Los Angeles, Respondent. 2d Civ. No. 31224.

Petition for writ of Prohibition denied. [Los Angeles, California November 28, 1966].

Roth
Presiding Judge

APPENDIX B.

Constitutional and Statutory Provisions Involved.

1. The pertinent provisions of the First Amendment to the United States Constitution are:

> "Congress shall make no law . . . abridging the freedom of speech, or of the press; . . ."

2. The pertinent provisions of the Fourteenth Amendment to the United States Constitution are:

> "No State shall . . . deprive any person of life, liberty, or property, without due process of law; . . ."

3. California Penal Code §182 provides in pertinent part as follows:

> "If two or more persons conspire:
> "1. To commit any crime
>
> * * *
>
> "They are punishable. . . ."

4. California Penal Code §311 provides as follows:

> "As used in this chapter:
>
> "(a) 'Obscene' means that to the average person, applying contemporary standards, the predominant appeal of the matter, taken as a whole, is to prurient interest, i.e., a shameful or morbid interest in nudity, sex, or excretion, which goes substantially beyond customary limits of candor in description or representation of such matters and is matter which is utterly without redeeming social importance.

"(b) 'Matter' means any book, magazine, newspaper, or other printed or written material or any picture, drawing, photograph, motion picture, or other pictorial repesentation or any statue, or other figure, or any recording, transcription or mechanical, chemical or electrical reproduction or any other articles, equipment, machines or materials.

"(c) 'Person' means any individual, partnership, firm, association, corporation or other legal entity.

"(d) 'Distribute' means to transfer possession of, whether with or without consideration.

"(e) 'Knowingly' means having knowledge that the matter is obscene."

5. California Penal Code §311.2 provides as follows:

"Every person who knowingly: sends or causes to be sent, or brings or causes to be brought, into this State for sale or distribution, or in this State prepares, publishes, prints, exhibits, distributes, or offers to distribute, or has in his possession with intent to distribute or to exhibit or offer to distribute, any obscene matter is guilty of a misdemeanor."

6. California Penal Code §938.1 provides in pertinent part as follows:

"If an indictment has been found or accusation presented against a defendant, such stenographic reporter shall certify and file with the county clerk an original transcription of his shorthand notes *and a copy thereof* and as many *additional* copies as there are defendants, other than fictitious de-

fendants, regardless of the number of charges or fictitious defendants included in the same investigation. The reporter shall complete such certification and filing within 10 days after the indictment has been found or the accusation presented unless the court for good cause makes an order extending the time. The time shall not be extended more than 20 days. The county clerk shall deliver the original of the transcript so filed with him to the district attorney immediately upon his receipt thereof, *shall retain one copy for use only by judges in proceedings relating to the indictment or accusation,* and shall deliver a copy of such transcript upon each such defendant or his attorney. . . ."

7. California Penal Code §939.6 provides as follows:

"In the investigation of a charge, the grand jury shall receive no other evidence than such as is given by witnesses produced and sworn before the grand jury, furnished by legal documentary evidence, or the deposition of a witness in the cases mentioned in subdivision 3 of Section 686. The grand jury shall receive none but legal evidence, and the best evidence in degree, to the exclusion of hearsay or secondary evidence."

8. California Penal Code §939.8 provides as follows:

"The grand jury shall find an indictment when all the evidence before it, taken together, if unexplained or uncontradicted, would, in its judgment, warrant a conviction by a trial jury."

9. California Penal Code §995 provides in pertinent part as follows:

"The indictment or information must be set aside by the court in which the defendant is ar-

raigned, upon his motion, in either of the following cases:

"If it be an indictment:

"1. Where it is not found, endorsed, and presented as prescribed in this code.

"2. That the defendant has been indicted without reasonable or probable cause. * * *"

10. California Penal Code §999a provides as follows:

"A petition for a writ of prohibition, predicated upon the ground that the indictment was found without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, must be filed in the appellate court within 15 days after a motion made under Section 995 of this code to set aside the indictment on the ground that the defendant has been indicted without reasonable or probable cause or that the defendant had been committed on an information without reasonable or probable cause, has been denied by the trial court. A copy of such petition shall be served upon the district attorney of the county in which the indictment is returned or the information is filed. The alternative writ shall not issue until five days after the service of notice upon the district attorney and until he has had an opportunity to appear before the appellate court and to indicate to the court the particulars in which the evidence is sufficient to sustain the indictment or commitment."

APPENDIX C.

Excerpt From the Opinion of Honorable Kenneth Holland.

Superior Court of the State of California for the County of Los Angeles.

The People of the State of California, Plaintiff, v. David Zentner, Reuben Sturman, Will Kuenne, and Tom Vail, Defendants. No. 297 456.

Memorandum of Opinion on Granting Motion to Dismiss Indictment on Constitutional Grounds.

* * *

"In 1960, the above mentioned Aday was the defendant in another conspiracy prosecution involving a number of similar books, among which was one called Sex Life of A Cop, also known as 10:04 Sgt. Thorne, the same book as in the above Haddad case. This case reached the Supreme Court of California on a search and seizure question (55 Cal.2d 789). This case has never been brought to trial. Thereafter, in 1964 or 1965, Aday was prosecuted under Federal obscenity statutes in the United States District Court for the Western District in Michigan, Southern Division, Criminal No. 66150A, in a 19-count indictment involving the following eight books: Witch Finder, The Black Night, Decisive Years, Sex Life of a Cop, Desperate Moments, Love Princess, I Am A Lesbian, and Never Enough. The jury was unable to agree that any of these books was obscene except Sex Life of a Cop on which defendant was found guilty on five counts for selling the single book, and received maximum penalty on each count of five years imprisonment and $5,000 fine, cumu-

lated to a total of a $25,000 fine and 25 years imprisonment, five years longer than the sentence served by the last two Nazi war criminals to be released from Spandau Prison for the crime of genocide, the most infamous of all. The conviction was affirmed but returned to the trial court with the suggestion to reduce the harsh penalty. (United States v. West Coast News Company, March, 1966, 357 Fed. 2d 855.) Aday was then resentenced to ten years' imprisonment. A writ of certiorari on this case is now pending before the United States Supreme Court. This Court has read Sex Life of a Cop, a ribald parody on the moral hypocrisy of some members of the police department and certain public officials in a small town, including the chief of police, the mayor and a judge. There are related a long series of sexual episodes which are described with no more detail than the tamest of the nightstand type books, and completely lacks violence or deviant practices. In this Court's opinion, this book could not possibly be held to be obscene on the limits of candor test under California law and appears to be comparable to a book called "The Sex Addicts" recently described and exculpated of obscenity by the Supreme Court of Illinois. (People v. Kimmel, decided September, 1966.)

* * *

"Dated: November 4, 1966.

(Stamped) Kenneth Holland
Kenneth Holland
Judge of the Superior Court"